

**CIVIL CASE No. 3:10cv622**  
**[Criminal Case No. 3:08cr233-2]**

## ORDER

For cause shown, the Petitioner's motion to dismiss his § 2255 petition will be allowed. Having reviewed the petition, as well as the record of the underlying criminal proceedings, the Court concludes that the petition was not timely filed. The Court further finds that the Petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336-38, 123 S.Ct. 1029, 154 L.Ed.2d 931 (2003) (in order to satisfy § 2253(c), a petitioner

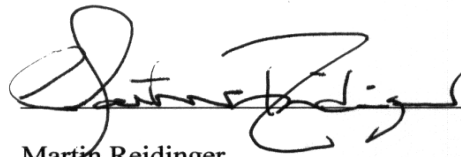
must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong) (citations omitted). Accordingly, the petition will be dismissed with prejudice. Further, the Court declines to issue a certificate of appealability. Rule 11(a), Rules Governing Section 2255 Proceedings for the United States District Courts.

**IT IS, THEREFORE, ORDERED** that the Petitioner's motion to dismiss his § 2255 petition [Doc. 4] is **ALLOWED**, and Petitioner's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence [Doc. 1] is hereby **DISMISSED WITH PREJUDICE**.

**IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules Governing Section 2255 Cases, this Court declines to issue a certificate of appealability.

**IT IS SO ORDERED.**

Signed: May 10, 2011

  
Martin Reidinger  
United States District Judge

